

**CONSENT DECREE AMONG THE UNITED STATES, STATE OF LOUISIANA**  
**SOUTHERN WOOD PIEDMONT COMPANY AND RAYONIER INC.**

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A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint on June 14, 1990, Civil Action No. CV90-1240, pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984 ("HSW"), 42 U.S.C. §6928(a) and (g) (hereinafter collectively referred to as ("RCRA")), and Section 309 of the Clean Water Act, 33 U.S.C. §1319 ("CWA"), against defendant, Marine Shale Processors, Inc. ("MSP"), with respect to its facility in Amelia, Louisiana, which is the subject of this Civil Action No. CV90-1240 (this "action").

B. The United States filed an Amended Complaint on September 8, 1992, alleging that, in addition to the claims set forth in the Complaint, MSP violated the Clean Air Act ("CAA"), 42 U.S.C. §§7401, et seq., alleging an alternative claim under the CWA, 33 U.S.C. §1311, and seeking recovery of response costs incurred and to be incurred by the United States pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., in connection with MSP's activities.

C. Pursuant to the authority of Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and Section 309 of the CWA, 33 U.S.C. §1319, and Section 113(b) of the CAA, 42 U.S.C. §7413(b), the United States' Amended Complaint sought injunctive relief and the imposition of civil penalties.

D. MSP filed an Answer and Counterclaims in this action.

E. The State of Louisiana, by and through the Louisiana Department of Environmental Quality ("LDEQ"), has intervened as a party plaintiff in this action.

F. Recycling Park, Inc. ("RPI") has intervened as party defendant in this action.

G. On January 7, 1992, MSP filed a Complaint against the United States in this action.

H. On July 12, 1993, Southern Wood Piedmont ("SWP") filed a Complaint in Intervention in this action. The United States counterclaimed against SWP in this action. These actions were consolidated with the Plaintiffs' claims against MSP and RPI.

J. The RCRA claims were tried to a jury for five weeks in April and May 1994 before Judge Adrian Duplantier, who granted a mistrial as to MSP and rendered a judgment in favor of SWP under Rule 54(b).

K. This Court granted summary judgment in favor of the United States on certain CAA, CWA and RCRA penalty claims tried in June and July 1994; and on August 30, 1994, entered a Judgment imposing an \$8 million penalty against MSP for these violations. This Court also granted judgment in favor of the United States on its counterclaim against SWP in the amount of \$25,000, which judgment has been paid and satisfied in full by SWP.

L. The United States Court of Appeals for the Fifth Circuit affirmed that portion of the Court's August 30, 1994, judgment awarding \$4 million in penalties against MSP, to be apportioned \$1.75 million to the State of Louisiana and \$2.25 million to the United States.

M. The remaining \$4 million of the August 30, 1994, Judgment was vacated by the Court of Appeals, and the matter of further penalties was remanded to this Court for further proceedings.

N. The Court of Appeals reversed and remanded the Rule 54(b) judgment of SWP for further findings by this Court.

O. GTX, Inc. ("GTX") thereafter obtained an option to purchase the assets and liabilities of MSP. To facilitate a settlement, GTX intervened in this action.

P. GTX and all parties to the litigation agreed to the terms set forth in a consent decree that was entered in this action on February 20, 1998 (the "Original Consent Decree").

Q. The LDEQ issued the following permits to GTX on or about February 19, 1999: (i) Hazardous Waste Operating Permit No. LAD 981 057 706 HW; (ii) Air Quality Part 70 Operating Permit No. 2660-00002-VO; and (iii) LPDES Permit No. LA0105988.

R. GTX merged into Earthlock Technologies, L.L.C. ("Earthlock") effective December 28, 2001, and, in connection with that merger, the said permits were transferred, with the prior approval of the LDEQ, to Earthlock.

S. A Vacating Order was issued effective on or about May 21, 2002, rendering the terms of the Original Consent Decree null, void, and without further legal effect as to any Party, except the stipulations set forth in Section XXI of the Original Consent Decree, which survived the issuance of the Vacating Order, and returning each party to the status quo ante, without prejudice to any rights, claims, counterclaims, causes of action, applications, motions or obligations, as if the Original Consent Decree had never been issued. Such stipulations are not affected by this Consent Decree.

T. Earthlock surrendered the aforesaid permits to LDEQ on December 23, 2002, and has advised the United States and LDEQ (collectively the "Plaintiffs") that it has abandoned its efforts to reopen the MSP Facility.

U. In March 2006, the Court granted the United States' motion for leave to file a counterclaim against SWP seeking recovery of response costs incurred and to be incurred by the United States pursuant to CERCLA at the MSP Facility and at the RPI Facility (as defined below). The State of Louisiana also has asserted a CERCLA counterclaim against SWP.

V. The Plaintiffs contend that as a result of the release or threatened release of hazardous substances, they have undertaken response actions at or in connection with the Sites (as defined below), and/or will undertake response actions in the future, and that in performing these response actions, the Plaintiffs have incurred and/or will continue to incur response costs at or in connection with those Sites.

W. The Settling Defendants (as defined below) do not admit any liability to the Plaintiffs arising out of any release or threatened release of hazardous substances at the Sites, or otherwise.

X. The Parties (as defined below) agree that settlement without further litigation is the most appropriate means of resolving this action with respect to the Settling Defendants.

Y. In furtherance of its responsibilities and duties, the LDEQ has reviewed this Consent Decree. After reviewing alternative projects and mitigative measures, the LDEQ has found that the potential adverse environmental impact and risks have been minimized or avoided as much as possible. Further, after balancing the possible environmental costs and benefits with social, economic and other factors, the LDEQ has found that the benefits outweigh the costs and that it is reasonable to enter into this Consent Decree consistent with the health, safety and welfare of the people of Louisiana.

Z. The Parties, without the necessity of trial or adjudication of any issues of fact or law and without precluding potential future enforcement of this Consent Decree, and without any admission of liability by any Party, consent to entry of this Consent Decree.

AA. The parties agree and the Court finds that this Consent Decree has been negotiated by the Parties in good faith, that the implementation of this Consent Decree will avoid prolonged

and complicated litigation and will provide for remediation, and that this Consent Decree is fair, reasonable and in the public interest.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

#### I. DEFINITIONS

1. Unless otherwise expressly stated, the terms used in this Consent Decree that are defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq.; the Louisiana Environmental Quality Act, La. R. S. 30:2001, et seq., or in regulations promulgated thereunder shall have the meanings set forth in such definitions. The term “hereafter” as used herein shall mean after the date upon which this Consent Decree is entered by the Court.

2. Whenever the terms listed below are used in this Consent Decree or any Appendices hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq.

“Consent Decree” shall mean this Consent Decree and all appendices hereto, and all modifications thereof, executed and delivered by all Parties.

“Day” shall mean a calendar day unless expressly stated to be a business day. “Business Day” shall mean a day other than a Saturday, Sunday or federal holiday. In computing any period of time prescribed or allowed under this Consent Decree, the provisions of Rule 6, Federal Rules of Civil Procedure, shall apply.



"Disputed Material" shall mean the material generated prior to the entry of this Consent Decree by combustion units located at the MSP Facility (e.g., the rotary kiln incinerator, oxidizers, waste combustion units and vitrification units (slag boxes)), which the United States has alleged in this litigation is a hazardous waste.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States or the State incur at or in connection with the Sites, after the date of entry of this Consent Decree, including in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the cost of attorney time and monies paid to secure access and/or to secure or implement institutional controls, all costs incurred in monitoring, assessing and evaluating any release or threat of release of any hazardous substance to the environment (including the water, sediments or plant or animal life in Bayou Boeuf), and all other costs recoverable under § 9607(a) of CERCLA and LEQA and incurred by the Plaintiffs.

"LEQA" shall mean the Louisiana Environmental Quality Act, La. R. S. 30:2001, et seq.

"LDEQ" shall mean the Louisiana Department of Environmental Quality and any successor departments or agencies of the State of Louisiana.

"Mixed SWP Disputed Material" shall mean (i) Disputed Material generated from materials delivered to MSP from SWP which was mixed with non-SWP waste materials before or during processing by MSP, and (ii) Disputed Material generated from the processing of materials delivered to MSP from SWP only, but which was mixed with non-SWP waste materials, or mixed

with Disputed Material generated from the processing of non-SWP waste materials, after being processed by MSP.

“MSP Facility” shall mean the property and improvements in or near Amelia, Louisiana that are described in and are or were subject to Hazardous Waste Operating Permit No. LAD 981 057 706 HW, issued by the LDEQ on or about February 19, 1999, and any other area where a hazardous substance, Waste Material or Disputed Material originating therefrom has been or is hereafter deposited, stored, disposed of, or placed or otherwise comes to be located other than at the RPI Facility. (A description of the MSP Facility real property is attached hereto as Appendix A).

“Non-SWP Disputed Material” shall mean all Disputed Material which was generated from the processing of non-SWP waste material and generally was not mixed with SWP Disputed Material after being processed by MSP.

“Notify” and “submit” and other terms signifying an obligation to transmit or communicate documents or information mean, unless otherwise specifically provided in this Consent Decree, to deposit in the United States mail not later than the day that such transmission or communication is required by this Consent Decree. In lieu of depositing such documents or information in the U.S. mail, these items may also be delivered in person or dispatched by express courier not later than the day that such transmission or communication is required by this Consent Decree. Should such day be a weekend day or a federal or State holiday, the delivery, deposit, or dispatch shall be due on the next business day.

“Off-Site Locations” shall mean all locations, other than the MSP Facility and the RPI Facility, where Disputed Material or Waste Material that has been or is hereafter removed from the MSP Facility or the RPI Facility, has been or is hereafter placed or disposed of (including, but

not limited to, the locations referenced in Section VIII.B of the Original Consent Decree, namely the Lowlands Construction (a/k/a Robichaux subdivision) site, the Crankshaft Company (a/k/a ABC Bait) site, the Schriever Auto Parts site, the M.B.J. Construction site, the Southern Scrap site, and the Domino Estate site).

“Original Consent Decree” shall mean the consent decree entered in this matter on February 20, 1998, which was vacated effective on or about May 21, 2002, except that the stipulations set forth in Section XXI of the said consent decree expressly survived the vacating of the said consent decree, and are binding upon the parties to that consent decree in any future litigation.

“Parties” shall mean the United States, on behalf of the EPA; the LDEQ on behalf of the State of Louisiana; Southern Wood Piedmont Company; and Rayonier Inc.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States or the State incurred or paid at or in connection with the Sites prior to and including the date of entry of this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the cost of attorney time, and all other costs recoverable under § 9607(a) of CERCLA or the LEQA, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) or the LEQA through such date.

“Person” shall mean an individual, firm, corporation, association, partnership, consortium, joint venture, limited liability company, commercial or other entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

“Plaintiffs” shall mean the United States, on behalf of the EPA; and the LDEQ on behalf of the State of Louisiana.

"Rayonier" shall mean Rayonier Inc., its subsidiaries (other than SWP), and its former parents and affiliates (i.e., ITT Industries, Inc. and ITT Corporation).

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"RCRA Subtitle C" shall mean 42 U.S.C. §6921-6939e, and federal or state regulations promulgated thereunder or corresponding thereto.

"RCRA Subtitle D" shall mean 42 U.S.C. §6941-6949a, and federal or state regulations promulgated thereunder or corresponding thereto.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, of hazardous substances, hazardous wastes, hazardous constituents or other Waste Material into the environment at the Sites and any transport or migration of such materials from the point of original release, including any transport or migration beyond the boundaries of the Sites, unless such transport or migration is otherwise permitted by law as in the case of a properly manifested and transported shipment of hazardous waste off-site.

"Remedial Measures" shall mean the obligations of SWP under Section VI of this Consent Decree.

"RPI Facility" shall mean the property described on Appendix B to this Consent Decree, which consists of the properties described and depicted as Area A, Area B, and Area C on Appendix B, and any other area where a hazardous substance, Waste Material or Disputed Material originating therefrom has been or is hereafter deposited, stored, disposed of, or placed or otherwise comes to be located other than at the MSP Facility.

“Settling Defendants” shall mean SWP and Rayonier, as well as the current and former shareholders, officers, directors and employees of those entities, respectively, acting in their official capacities for such entities.

“Sites” shall mean the MSP Facility, the RPI Facility, and the Off-Site Locations.

“State” or “State of Louisiana” shall mean the State of Louisiana and its agencies and departments, including the Louisiana Department of Environmental Quality.

“SWP” shall mean Southern Wood Piedmont Company.

“SWP Disputed Material” shall mean, and consists of (i) all Unmixed SWP Disputed Material, and (ii) all Mixed SWP Disputed Material.

“United States” shall mean the United States of America, and its agencies and departments, including the United States Environmental Protection Agency.

“Unmixed SWP Disputed Material” shall mean all Disputed Material generated from the processing of material sent to MSP from SWP, and which was processed separately from any other materials, and was not mixed with any Non-SWP Disputed Material after being processed by MSP.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 1004(27) of RCRA, 42 U.S.C. § 6903(27); any “solid waste” or “hazardous waste” under the regulations promulgated under RCRA; and any “hazardous substance,” “solid waste,” “hazardous waste,” pollutant or contaminant under the LEQA and the regulations promulgated under LEQA.

“Work” shall mean all activities SWP is required to perform under this Consent Decree, except those required under Paragraph 32 of this Consent Decree (regarding preservation of records).

“Work Plan” shall mean the document developed to implement the Remedial Measures set forth in Section VI of the Consent Decree approved by the Parties and attached hereto as Appendix C.

## II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of Civil Action No. CV90-1240 pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; Sections 3008(a) and (h) of RCRA, 42 U.S.C. §§ 6928(a) and (h); Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); Section 309 of the CWA, 33 U.S.C. § 1319; Section 113 of the CAA, 42 U.S.C. § 7413(b); and over the Parties to this action. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c), 42 U.S.C. §§ 6928(a) and (h), 9613(c), and 7413(b).

4. Solely for the purposes of this Consent Decree and the underlying complaints, the Parties waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District. The Parties shall not challenge the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND AND NOTICE OF TRANSFER

5. This Consent Decree shall apply to and be binding upon the United States, the State of Louisiana, and the Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant’s responsibilities under this Consent Decree.

6. Unless otherwise agreed to by Plaintiffs, no change in ownership, corporate, or partnership status relating to or conveyance of title, easement, or other interest in the MSP Facility or the RPI Facility, including but not limited to any lease or transfer of assets or real or personal property, will alter SWP's obligation to comply with the requirements of this Consent Decree or SWP's liability for compliance by any successor or assign of SWP in the event such successor or assign fails to perform obligations required by the Consent Decree.

7. All aspects of the Work to be performed by Settling Defendants pursuant to Section VI (Remedial Measures) of this Consent Decree shall be under the direction and supervision of a Supervising Contractor, the selection of which shall be subject to disapproval for good cause by EPA after a reasonable opportunity for review and comment by the State. Within 30 days after the lodging of this Consent Decree, the Settling Defendants shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue to the Settling Defendants a written notice of disapproval or an authorization to proceed within 60 business days of its receipt of such notification from the Settling Defendants. If EPA issues a notice of disapproval, SWP shall either submit within 45 business days after receipt of such notice the name, title, and qualifications of another contractor proposed to be the Supervising Contractor, or invoke Dispute Resolution (Section XII). If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph within 60 business days of its receipt of such notification from the Settling Defendants, the Supervising Contractor selected by Settling Defendants shall be deemed approved by EPA and the State.

8. At least ten (10) days prior to the commencement of any Work (other than work commenced or completed on the date of entry of this Consent Decree), SWP shall provide to each

contractor hired to perform or monitor any of the Work required by this Consent Decree or its Appendices, and to each Person representing SWP with respect to the MSP Facility, RPI Property, or the Work, a copy of all sections of this Consent Decree or Appendices relevant to the contractor's employment, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree and its Appendices. SWP or its contractors shall provide written notice of this Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree.

9. Notwithstanding any retention of contractors, subcontractors or agents to perform or monitor any Work required under this Consent Decree, SWP shall be responsible for ensuring that all Work is performed in accordance with the requirements of this Consent Decree. In any action to enforce this Consent Decree or obtain stipulated penalties hereunder, SWP shall not assert as a defense the failure of its employees, servants, agents, contractors or subcontractors to take actions necessary to comply with this Consent Decree, unless SWP establishes that such failure resulted from a "force majeure" event as defined in Section XI of this Consent Decree.

#### IV. OBJECTIVES

10. The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment by the implementation of remedial measures by SWP at the RPI Facility, to be financed by Rayonier, to reimburse response costs of the Plaintiffs as set forth herein, and to resolve the claims of Plaintiffs against the Settling Defendants as provided in this Consent Decree.

#### V. GENERAL PROVISIONS

11. Rayonier shall finance and SWP shall perform the Work in accordance with this Consent Decree, and all plans, standards, specifications, and schedules set forth herein or



developed by the Settling Defendants and approved by EPA pursuant to this Consent Decree. Rayonier also shall reimburse the United States and the State for Past Response Costs and Future Response Costs as provided in Paragraph 36 of this Consent Decree.

12. In the event of the insolvency or other failure of SWP or Rayonier to implement the requirements of or pay amounts owed under this Consent Decree as set forth in Paragraph 11, the other shall complete all such requirements and pay any such amounts owed.

13. All activities undertaken by SWP and Rayonier pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The activities conducted in accordance with this Consent Decree, if approved by EPA, shall be considered to be consistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

14. No permit shall be required for any portion of the Work conducted entirely on-site (i.e. within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work).

15. SWP may seek, and the Plaintiffs will not oppose, relief under the provisions of Section XI (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any governmental approval required before commencement of the Work, provided that SWP has applied for any such approvals in a timely and complete manner.

16. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal, state or local statute or regulation.

## VI. REMEDIAL MEASURES

17. In December 2004, SWP submitted a Human Health Risk Assessment: Recycling Park, Inc. Facility prepared for SWP by Chemrisk, Inc ("RPI Risk Assessment"). See Appendix D. After reviewing the previous history of the RPI Property and the sampling results and analysis contained in the RPI Risk Assessment, EPA and LDEQ have determined that the Remedial Measures set forth in the attached Work Plan will be protective of human health and the environment at the RPI Property and has authorized SWP to implement such Remedial Measures. See Appendix C.

18. Within 90 days after the Effective Date of the Consent Decree, SWP shall commence the clearing and grubbing of Area A of the RPI Site. Within 24 months thereafter, SWP shall complete the Remedial Measures described in the attached Work Plan for Area A of the RPI Facility.

19. Within 150 days after the Effective Date of the Consent Decree, SWP shall commence the clearing and grubbing of Area B of the RPI Site. Within 24 months thereafter, SWP shall complete the Remedial Measures described in attached Work Plan for Area B of the RPI Facility.

20. Within 210 days after the Effective Date of the Consent Decree, SWP shall commence the clearing and grubbing of Area C of the RPI Site. Within 24 months thereafter, SWP shall complete the Remedial Measures described in attached Work Plan for Area C of the RPI Facility.

21. SWP may seek, and the Plaintiffs will not oppose, relief under the provisions of Section XI (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining access to the RPI facility for SWP for performance of the Remedial Measures in accordance with Section VIII.

22. Material to be utilized for cap material must have permeability less than  $1 \times 10^{-7}$  cm/sec per ASTM 5084. Cap material will be placed in maximum six inches compacted lifts and compacted to 90% standard proctor per ASTM D698 maintaining moisture at 2%-8% above optimum.

23. Upon satisfactory testing of the cap material to verify that it meets the requirements of Paragraph 22, an additional six inches of loose topsoil will be placed and spread over the entire pile area. This topsoil will then be seeded and fertilized to allow for expedient growth of grass. Topsoil must consist of available material complying with LADOTD specifications. Generally, the material must have less than 20% organics, no rocks or cobbles larger than two inches, and minimal silt content. Topsoil must be well graded, free of lumps, and placed and spread while maintaining a compaction less than 85% standard proctor. Topsoil must be free of pesticides or other contaminants that will inhibit the growth of grass and vegetation.

24. The entire disturbed area will be seeded and fertilized. Seeding must be accomplished by spreading 45 pounds of Bermuda/rye grass per acre. Seed shall be broadcast or spread in two perpendicular passes to ensure adequate coverage. Immediately after seeding, the seed must be thoroughly watered and fertilized to promote growth of grass on the topsoil. All disturbed areas (piles, side slopes, on-site borrow areas, etc) must be watered and maintained until the site has been 85% established.

25. An accredited geo-technical testing services company must be retained to maintain a certified technician on site at all times during the performance of the Remedial Measures required in this Section, except during seeding, fertilizing, and watering.

26. Within sixty (60) days after SWP concludes that the Remedial Measures have been fully performed, SWP shall schedule and conduct an inspection to be attended by SWP and the

Plaintiffs. If, after the inspection, SWP still believes that the Remedial Measures have been fully performed, it shall submit a written report requesting certification to EPA and LDEQ for review and approval, pursuant to Section VII (Agency Review and Approval of Plans and Other Submissions), within 30 days of the inspection. EPA, after a reasonable opportunity for review and comment by LDEQ, shall issue written notice of approval or denial of the request for certification of completion within 60 days of receipt of the request from SWP.

27. After the EPA and LDEQ certify that the Remedial Measures have been fully performed, SWP shall be responsible for maintaining the effectiveness of the Remedial Measures performed for a period of 12 months after such certification by the EPA and LDEQ.

28. The Plaintiffs shall seek an agreement from the owner of the RPI Facility or an order from the Court applying the following institutional controls to the RPI Facility:

(a). The RPI Facility shall only be used for industrial/commercial land uses as described in LDEQ's Risk Evaluation/Corrective Action Program ("RECAP"), Section 2.9;

(b). The cap placed over the Disputed Material shall not be disturbed or removed;

(c). If any cap material is disturbed or removed in violation of Subparagraph B above, the Person who disturbs or removes the material shall immediately repair and restore the same;

(d). In accordance with Paragraph 17, if any Disputed Material is removed and transported from the RPI Facility, it shall be managed and transported as solid waste and disposed of in a Type I Industrial Solid Waste Landfill under Louisiana Administrative Code ("LAC") 33 Part VII, or in an equivalent RCRA Subtitle D Landfill if to be disposed of outside Louisiana, in a segregated cell containing no material other than the removed Disputed Material, unless the total

volume of the Disputed Material removed from the RPI Facility is less than 100 tons, in which case a segregated cell is not required; and

(e). The execution of any and all documents, including but not limited to any conveyance notices, easements, covenants, restrictions, servitudes, or future act of sale, deemed appropriate by LDEQ or EPA to implement the above institutional controls, and upon request by LDEQ or EPA, the filing of such documents for record in the official real property records of the Clerk of Court of St. Mary Parish, Louisiana. The contemplated forms of the Conveyance Notification and Transfer Provision are set forth in Appendices E and F hereto.

#### VII. AGENCY REVIEW AND APPROVAL OF DOCUMENT SUBMITTALS

29. As provided for in this Consent Decree, EPA and LDEQ shall review all reports and other documents submitted to EPA and LDEQ and, if required, approval pursuant to this Consent Decree, including reports and documents concerning the proposed Supervising Contractor, request for certification of completion of the Remedial Measures, and request for termination of the Consent Decree. If approval is required, EPA and LDEQ shall notify SWP in writing of their approval, disapproval or modification of such reports or other documents, or any part thereof within the time periods set forth in this Consent Decree. In the event of any disapproval, EPA and LDEQ's written notice shall explain the reasons for the disapproval and provide the data, if any, upon which they rely for such disapproval. In addition, they shall specify and provide reasoning for the modifications or additions which they believe must be made prior to approval of any such reports or other documents. Whenever both EPA and LDEQ are required to review and approve any submittals under this Consent Decree, approval shall be determined by EPA after a reasonable opportunity for review and comment by LDEQ.

30. Within forty five (45) days of receipt of EPA's and LDEQ's disapproval of any report or other document required to be submitted under this Consent Decree, or within such other time as provided in this Consent Decree, SWP shall amend and submit a revised report or other document to EPA and LDEQ. If EPA and LDEQ issue a notice of disapproval or modification, SWP shall attempt to comply with the action specified by EPA and LDEQ or invoke its right to Dispute Resolution (Section XII). If EPA fails to provide written certification of completion or notice of disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek, and the Plaintiffs will not oppose, relief under the provisions of Section XI (Force Majeure).

31. The written report requesting certification of completion of the Remedial Measures (under Paragraph 26), the request for termination of this Consent Decree (under Section XXII), and all other documents submitted by SWP to EPA and LDEQ for review and approval pursuant to this Consent Decree shall be signed by a responsible agent of SWP, or his duly authorized representative, and shall include the following certification statement:

"I certify under penalty of law that this document and all appendices were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I further certify, to the best of my knowledge and belief, that this document meets the objectives and requirements of the Consent Decree entered among LDEQ, EPA and SWP in connection with Civil Action No. 90-1240 in United States District Court for the Western District of Louisiana. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

32. The Parties agree to preserve and make available to each other during the pendency of this Consent Decree, and for a minimum of three (3) years after its termination, all

records and documents in their possession which relate to the performance of obligations under this Consent Decree.

#### VIII. ACCESS

33. The RPI Facility is presently owned by Recycling Park, Inc. ("RPI"). SWP shall make a written request to RPI to obtain site access agreements for itself and its contractors, and for EPA and LDEQ and their authorized representatives and contractors, from the owner(s) of such property. SWP shall make the written request to obtain such access agreements as expeditiously as practicable, to prevent any delays in Work required under this Consent Decree. If an agreement for access to such property is not obtained within sixty (60) days after SWP's request for access, SWP shall notify EPA and LDEQ regarding its written request to RPI to secure an access agreement and the reasons for SWP's inability to obtain such an agreement. In the event that the United States or State of Louisiana obtain or the Court orders access for SWP, SWP shall undertake the Work approved by EPA and LDEQ pursuant to this Consent Decree on such property.

34. After the access described in Paragraph 33 is obtained, SWP agrees to provide EPA or LDEQ and their representatives, including contractors, access at all reasonable times, to enter and move about all property at the RPI Property, with such representatives having due regard for safety of personnel and property, for any purpose relating to the implementation, monitoring or enforcement of this Consent Decree, including, without limitation, interviewing SWP's Supervising Contractor, his/her designated representative(s) or personnel involved in field work at the RPI Property; inspecting records, operating logs and contracts related to the implementation, monitoring or enforcement of this Consent Decree; reviewing progress of SWP in carrying out terms of this Consent Decree; conducting such sampling and tests as EPA or

LDEQ or their representatives deem appropriate for implementation, monitoring or enforcement of this Consent Decree; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data that SWP submits to LDEQ and EPA. SWP shall permit such persons to inspect and copy all records, files, photographs, computer records and other writings, including all sampling and monitoring data, required to implement, monitor or enforce this Consent Decree. Such persons shall comply with all health and safety plans approved pursuant to this Consent Decree and SWP's safety program. SWP or its representatives may accompany EPA or LDEQ representatives throughout their presence at the RPI Facility, but may not in any way delay or impede their investigative activities. Upon request at the time of sampling, SWP may obtain splits of any samples and duplicates of any photographs and videos taken by EPA or LDEQ or their contractors, and upon request shall be provided with copies of the results of analyses or tests made on such samples and such photographs and videos. In the event SWP believes that information, data or other material accessible to the EPA or LDEQ under this Consent Decree contains confidential business information, SWP shall be entitled to all confidential business information protections available under applicable law or regulation, and EPA and LDEQ shall handle such designated material in accordance with such law.

35. Nothing in this Section limits or otherwise affects LDEQ or EPA's right of access and entry pursuant to any applicable law, including, but not limited to, Section 3007 of RCRA, 42 U.S.C. § 6927, and Section 104(e) of CERCLA, 42 U.S.C. § 9604, La. R.S. 30:2012, et seq., and other corresponding state laws.

#### IX. PAYMENT OF RESPONSE COSTS

36. Within 30 days of the Effective Date of this Consent Decree, Settling Defendants shall pay to LDEQ \$200,000 in payment for Past Response Costs and anticipated Future



Response Costs. Settling Defendants shall make all payments required by this Paragraph by a certified or cashier's check made payable to the LDEQ, and mailed or delivered to the Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, EPA, the Regional Financial Management Officer, and the LDEQ in accordance with Section XVIII (Notices).

37. Upon receipt of the funds, the Secretary shall deposit the funds in an interest bearing escrow account, pursuant to La. R.S. 30:2031 B. The Secretary shall expend such funds solely for closure and remediation of the contamination at the MSP Facility and/or the RPI Facility.

38. If any Settling Defendant fails to make any payment required under this Consent Decree by the due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

#### X. STIPULATED PENALTIES

39. SWP shall be liable for Stipulated Penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

A. SWP shall pay stipulated penalties to the United States and the State for each day it fails to meet any of the completion dates for Areas A, B, or C of the RPI Property in accordance with the requirements set forth in Paragraphs 18-25 above and the Work Plan. The

stipulated penalties collectively payable to the United States and the State per day for each failure to meet each milestone date are as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day of Violation</u>
1 <sup>st</sup> to 30 <sup>th</sup> day	\$ 200
31 <sup>st</sup> to 60 <sup>th</sup> day	\$ 400
61 <sup>st</sup> to 90 <sup>th</sup> day	\$ 750
After 90 days	\$1,250

B. SWP shall pay stipulated penalties to the United States and the State for each day it fails to meet any of the requirements for proposing a Supervising Contractor as set forth in Paragraph 8 or for scheduling and conducting an inspection and submitting a written completion report to EPA and LDEQ as set forth in Paragraph 26. The stipulated penalties collectively payable to the United States and the State per day are as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day of Violation</u>
1 <sup>st</sup> to 30 <sup>th</sup> day	\$ 200
31 <sup>st</sup> to 60 <sup>th</sup> day	\$ 400
After 60 days	\$ 750

C. SWP shall pay stipulated penalties to the United States and the State for each day it fails to effectively maintain the Remedial Measures performed at the RPI Property identified in Paragraph 27, above as required by this Consent Decree. The stipulated penalties collectively payable to the United States and the State per day are as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day of Violation</u>
1 <sup>st</sup> to 30 <sup>th</sup> day	\$ 200
31 <sup>st</sup> to 60 <sup>th</sup> day	\$ 400

61 <sup>st</sup> to 90 <sup>th</sup> day	\$ 750
After 90 days	\$1,250

40. Stipulated Penalties under this Section shall begin to accrue on the day after complete performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue for separate violations of Subparagraphs A, B and C of Paragraph 39 of this Consent Decree. The United States, or the State, or both may seek Stipulated Penalties under this Section. Where both sovereigns seek Stipulated Penalties for the same violation of this Consent Decree, SWP shall pay fifty percent to the United States and fifty percent to the State. Where only one sovereign demands Stipulated Penalties for a violation, and the other sovereign does not join in the demand within thirty (30) days of receiving the demand, or timely joins in the demand but subsequently elects to waive or reduce Stipulated Penalties for that violation, SWP shall pay the Stipulated Penalties due for the violation to the sovereign making the initial demand, less any amount paid to the other sovereign. The determination by one sovereign not to seek Stipulated Penalties shall not preclude the other sovereign from seeking Stipulated Penalties.

41. The United States or the State may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due that sovereign under this Consent Decree.

42. Any applicable Stipulated Penalties shall continue to accrue during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

- a. If the dispute is resolved by agreement that is not appealed to the Court, SWP shall pay accrued penalties determined by the Parties to be owing, together with interest, to the Plaintiffs within thirty (30) days of such agreement;

- b. If the dispute is resolved by a decision of EPA that is not appealed to this Court, SWP shall pay accrued penalties determined by EPA to be owing, together with interest, to the Plaintiffs within thirty (30) days of the Effective Date of the agreement or the receipt of EPA's decision or order;
- c. If the dispute is appealed to this Court and the Plaintiffs prevail in whole or in part, SWP shall pay all stipulated penalties determined by the Court to be owing, if any, together with interest. The Court, in its discretion, shall determine whether and in what amount the stipulated penalties accruing during dispute resolution shall be payable by SWP. SWP shall make such payment within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph d, below;
- d. If any Party appeals the District Court's decision, SWP shall pay all accrued penalties determined by the Court to be owing, if any, together with interest, within sixty (60) days of receiving the final appellate court decision.

43. Upon demand, SWP shall, as directed by the United States, pay Stipulated Penalties owing to the United States by Electronic Funds Transfer in accordance with Section IX (Payment of Response Costs), above; and as directed by the State, pay Stipulated Penalties owing to the State by certified check in accordance with Section IX.

44. If the SWP fails to pay Stipulated Penalties according to the terms of this Consent Decree, the United States and the State shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961.

45. Subject to the provisions of Section XIV of this Consent Decree (Covenants Not to Sue by Plaintiffs), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for SWP's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of relevant statutory or regulatory requirements, the SWP shall be

allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

#### XI. FORCE MAJEURE

46. A "force majeure event" is any event arising from one or more causes beyond the control of SWP, Rayonier, their contractors, or any entity controlled by SWP or Rayonier that delays or prevents the performance of any obligation under this Consent Decree despite SWP's or Rayonier's best efforts to fulfill the obligation. The requirement that SWP or Rayonier exercise "best efforts to fulfill the obligation" means using reasonable efforts to anticipate any potential force majeure event and reasonable efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the greatest extent reasonably possible. "Force Majeure" does not include SWP's financial inability to perform any obligation under this Consent Decree.

47. SWP shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than fifteen (15) days after the time SWP first knew that the event might cause a delay. Within 10 business days thereafter, SWP shall provide in writing to EPA and LDEQ the anticipated duration of any delay; its cause(s); the SWP's past and proposed future actions to prevent or minimize any delay; a schedule for carrying out those actions; and SWP's rationale for attributing any delay to a force majeure event. Failure to give such notice shall preclude SWP from asserting any claim of force majeure for that event for the period of such failure to comply, and for any additional delay caused by such failure.

48. If the United States and the State agree that a force majeure event has occurred, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be suspended by EPA during the force majeure event and extended for

such time as is adequate to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation unless the other obligation is affected by such force majeure event. If the United States and the State do not agree that a force majeure event has occurred, the United States will notify SWP in writing of its decision.

49. If SWP elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than fifteen (15) business days after receipt of the United States' written notice. In any such proceeding, SWP shall have the burden of proving, by a preponderance of the evidence, that each claimed force majeure event was or is a force majeure event; that SWP gave the notice required by this Section; that the force majeure event caused any delay SWP claims was attributable to that event; and that SWP exercised reasonable efforts to avoid and mitigate the effects of any delay caused by the event.

## XII. DISPUTE RESOLUTION

50. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by any Party to enforce obligations of any other Party that have not been disputed in accordance with this Section.

51. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when a Settling Defendant sends the United States and LDEQ a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) days from the date the dispute arises, unless that period is modified by

written agreement of the parties to the dispute. If the Parties cannot resolve a dispute by good faith informal negotiations, then the position advanced by the United States in writing shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, a Settling Defendant invokes formal dispute resolution procedures as set forth below.

52. A. A Settling Defendant shall invoke formal dispute resolution procedures (if it so elects), within the time period provided in the preceding Paragraph, by serving on the United States and LDEQ a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not be limited to, any factual data, analysis or opinion supporting the Settling Defendant's position, and any supporting documentation relied upon by the Settling Defendant.

B. The United States and LDEQ shall serve its Statement of Position within forty-five (45) days of receipt of SWP's Statement of Position. The Plaintiffs' Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position, and all supporting documentation relied upon by the United States and LDEQ. The Plaintiffs' Statement of Position shall be binding on the Settling Defendant, unless the Settling Defendant files a motion for judicial review of the dispute in accordance with Subparagraph 54.C., below.

C. The Settling Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and LDEQ, in accordance with Section XVIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) days of the date of receipt of the plaintiffs' Statement of Position pursuant to the preceding Subparagraph. The motion shall contain a written statement of the

Settling Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Consent Decree.

D. The Plaintiffs shall respond to the Settling Defendant's motion within the time period provided in the Local Rules of this Court, unless the parties stipulate otherwise. The Settling Defendant may file a reply memorandum, to the extent permitted by the Local Rules or the Parties' stipulation, as applicable.

E. In any judicial review of any dispute governed by this Section, SWP shall bear the burden of demonstrating that its position complies with this Consent Decree and any applicable statutory requirements.

F. Invoking dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Defendant under this Consent Decree, not directly in dispute or related thereto, unless the United States and LDEQ or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter shall continue to accrue during any period of dispute resolution, and payment of any Stipulated Penalties shall be stayed pending resolution of the dispute as provided in this Section. If the Settling Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### XIII. INDEMNIFICATION

53. The United States and LDEQ do not assume any liability by entering into this agreement. SWP agrees to indemnify, save, and hold harmless the United States, LDEQ, their agencies, departments, officials, agents, employees, and representatives from any and all claims or causes of action arising from or on account of negligent or other wrongful acts or omissions of



SWP, its officers, directors, employees, and any other Person acting on its behalf or under its control in carrying out the activities pursuant to this Consent Decree. Further, to the extent that SWP fails to assume defense of the United States and LDEQ for any indemnifiable claim, SWP agrees to pay the United States and LDEQ all costs they incur including, but not limited to, reasonable attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or LDEQ based on negligent or other wrongful acts or omissions of SWP, its officers, directors, employees, agents, and any Persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor LDEQ shall be held out as a party to any contract entered into by or on behalf of SWP in carrying out activities pursuant to this Consent Decree. Neither SWP nor any such contractor shall be considered an agent of the United States or LDEQ.

54. SWP waives all claims against the United States and LDEQ for damages or reimbursement or for set-off of any payments made or to be made to the United States or LDEQ arising from or on account of any contract, agreement, or arrangement between SWP and any Person for performance of Work on or relating to the RPI Property, including, but not limited to, claims on account of construction delays. In addition, SWP shall indemnify and hold harmless the United States and LDEQ with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between SWP and any Person for performance of Work on or relating to the RPI Property, including, but not limited to, claims on account of construction delays.

#### XIV. COVENANTS NOT TO SUE BY PLAINTIFFS

55. In consideration of the actions that will be performed and any payments that will be made by SWP under the terms of the Consent Decree, this Consent Decree resolves and the

United States and LDEQ covenant not to sue or to take administrative action against the Settling Defendants for claims alleged in Plaintiffs' Complaints, those under Sections 106 and 107(a) of CERCLA, Section 7003 of RCRA, La. R.S. 30:2271 et seq. and La. R.S. 30:2171 et seq. relating to the Sites, or for recovery of any Past Response Costs and Future Response Costs. Except with respect to future liability, these covenants not to sue shall take effect upon receipt by LDEQ of the payment required under Paragraph 36 of Section IX (Payment of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon certification of completion of the Remedial Measures by EPA and LDEQ pursuant to Paragraph 26 of Section VI (Remedial Measures). These covenants not to sue are conditioned upon the satisfactory performance by the Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other Person.

56. The United States and LDEQ reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States and LDEQ reserve all rights against Settling Defendants with respect to:

- a. claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the Settling Defendants' past, present, or future disposal, release, or threat of release of Waste Materials outside of the Sites;
- c. liability based upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of

Disputed Material at or in connection with the Sites, other than as provided in this Consent Decree, or otherwise ordered by EPA or LDEQ, after signature of this Consent Decree by the Settling Defendants; and

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the reasonable costs of any natural resource damage assessments;

e. criminal liability; and

f. liability for violations of federal or state law by the Settling Defendants which occur during or after implementation of the Remedial Measures.

57. In the event EPA or LDEQ determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA or LDEQ may assume the performance of all or any portions of the Work as EPA or LDEQ determines necessary. Settling Defendants may invoke the procedures set forth in Section XII (Dispute Resolution) to dispute EPA or LDEQ's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs to be paid by Settling Defendants.

58. Notwithstanding any other provision of this Consent Decree, the United States and LDEQ retain all authority and reserve all rights to take any and all remedial measures authorized by law as to Persons other than the Settling Defendants; provided, however, that nothing in this Paragraph shall modify or otherwise affect the covenants not to sue provided to Settling Defendants in Paragraph 55 or the reservations afforded the Plaintiffs in Paragraph 56.

#### XV. COVENANTS BY SETTLING DEFENDANTS

59. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or LDEQ with respect to the MSP Facility, the RPI Facility, Past and Future Response Costs, or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any comparable funds maintained by LDEQ for costs incurred in complying with this Consent Decree.

b. any claims, including claims for declaratory judgment, against the United States, including any department, agency or instrumentality of the United States under RCRA including Sections 3004, 3008 or 7003, or CERCLA including Sections 107 or 113 related to the MSP Facility or RPI Facility, or

c. any claims arising out of response actions at or in connection with the MSP Facility or the RPI Facility, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

d. any direct or indirect claim for disbursement from the escrow account established by the Secretary under Paragraph 37 for closure and remediation of the contamination at the MSP or RPI Facilities.

60. These covenants not to sue shall not apply in the event that the United States or the State of Louisiana bring a cause of action or issue an order pursuant to the reservations set forth in Paragraph 56, but only to the extent that Settling Defendants' claims arise from the same remedial measures, response action, response costs, or damages that the United States or the State of Louisiana is seeking pursuant to the applicable reservation. Nothing in this Consent

Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

61. Settling Defendants agree not to assert and to waive and dismiss all claims or causes of action that they may have for all matters relating to the Sites, including for contribution, against all Persons not parties to this Consent Decree. This agreement and waiver shall not apply in the event:

(a). The United States or the State of Louisiana brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 56; or

(b). Any Person not a party to this Consent Decree brings an action or asserts a claim for losses, liabilities, or damages of any nature against any Settling Defendant, arising out of or related in any manner to (i) the Sites, including, but not limited to, any Past Response Costs, Future Response Costs, or response costs incurred or that may hereafter be incurred by any Person other than the United States or the State of Louisiana; or (ii) any damage or injury to, destruction of, or loss of natural resources, or for the costs of any natural resources damage assessments, relating to any of the Sites.

#### XVI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

62. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any Person not a Party to this Consent Decree. Except as provided in Paragraph 61, the Parties expressly reserve any and all rights, defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any Person not a Party hereto. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue non-Settling Defendants to obtain additional response costs or

response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

63. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions (including, but not limited to, all removal actions and all remedial actions) taken or that may hereafter be taken, and all Past Response Costs, Future Response Costs, and other response costs or remedial costs incurred or paid or that may hereafter be incurred or paid, by the United States, the State of Louisiana, or any other Person with respect to any of the Sites, including, but not limited to, all claims, losses, or liabilities of any kind that are or may hereafter be asserted by any Person against the Settling Defendants pursuant to CERCLA (including, but not limited to, Sections 106 or 107 of CERCLA, 42 U.S.C. §§9606 or 9607), RCRA (including, but not limited to, Section 7003 of RCRA, 42 U.S.C. §6973), or any corresponding state statutes, regulations, or provisions of law. The “matters addressed” in this settlement do not include those matters as to which the United States and the State have reserved their rights, in the event that the United States or the State assert rights against Settling Defendants reserved under Paragraph 56 of the Consent Decree.

64. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and LDEQ in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the

United States and LDEQ within 10 business days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and LDEQ within 10 business days of service or receipt of any Motion for Summary Judgment and within 10 business days of receipt of any order from a court setting a case for trial.

65. In any subsequent administrative or judicial proceeding relating to the Sites brought pursuant to those rights specifically reserved in Paragraph 56, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or LDEQ in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the rights of the Settling Defendants to assert the enforceability of the covenants not to sue set forth in Paragraph 55.

66. If any Disputed Material is removed and transported from the RPI Facility, SWP and Rayonier shall not be designated as a generator of the Disputed Material on any manifests, records, or other documents related thereto, unless SWP or Rayonier removes and transports any of such Disputed Material from the RPI Facility. In addition, if any Disputed Material or Waste Material is removed and transported from the MSP Facility, SWP and Rayonier shall not be designated as a generator of the Disputed Material or Waste Material on any manifests, records, or other documents related thereto, unless SWP or Rayonier removes and transports any of such Disputed Material or Waste Material from the MSP Facility.

#### XVII. COSTS OF SUIT

67. The Parties shall bear their own costs of this action, including attorneys fees, except that the United States and LDEQ shall be entitled to collect the costs (including attorneys

fees) incurred in any action necessary to collect any portion of any Stipulated Penalties due but not paid by the Settling Defendants.

#### XVIII. NOTICES

68. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:

Chief,  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Reference: DO Case No. 90-5-1-1-07473

As to EPA:

Chief, RCRA Branch  
ALONN (6EN-HX)  
Compliance Assurance and Enforcement Division  
U.S. Environmental Protection Agency, Region VI  
1445 Ross Avenue  
Dallas, Texas 75202-2733  
Attn: SWP - Project Coordinator

As to LDEQ:

General Counsel  
Legal Division  
Louisiana Department of Environmental Quality  
P.O. Box 4302  
Baton Rouge, Louisiana 70821-4302

As to the Settling Defendants:

Southern Wood Piedmont Company  
c/o Rayonier Inc.  
Attn: Mr. Timothy H. Brannon, President  
50 North Laura Street, Suite 1900  
Jacksonville, FL 32202

With a copy to:



Southern Wood Piedmont Company  
Attn: Mr. Bill Arrants, General Manager  
P.O. Box 5447  
Spartanburg, SC 29304  
(municipal address)  
591 Springfield Road  
Spartanburg, SC 29303

and

Henry C. Perret, Jr.  
Perret Doise  
600 Jefferson St., Ste. 1200  
P.O. Drawer 3408  
Lafayette, LA 70502-3408

Rayonier Inc.  
Attn: Mr. Michael R. Herman  
Vice President and General Counsel  
50 North Laura Street, Suite 1900  
Jacksonville, FL 32202

69. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

70. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing. Notifications to or communications, if received, shall be deemed submitted on the date they are postmarked, or when sent by non-postal delivery, the date of pickup provided same is for next day delivery.

#### XIX. EFFECTIVE DATE

71. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

#### XX. RETENTION OF JURISDICTION

72. The Court shall retain jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XII of this Consent Decree (Dispute Resolution).

#### XXI. MODIFICATION

73. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court. The terms and schedules contained in the Appendices of this Consent Decree may be modified upon written agreement of the Parties without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects the Settling Defendants's ability to meet the objectives of this Consent Decree.

#### XXII. PUBLIC PARTICIPATION

74. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7, and for notice, comment, and an opportunity for a public meeting in accordance with 42 U.S.C. § 6973(d). The United States reserves the right to withdraw or withhold its consent if the comments regarding this Consent Decree disclose facts or considerations indicating that this Consent Decree is inappropriate, improper, or inadequate. The Settling Defendants consent to entry of this Consent Decree without further notice.

75. The Parties agree and acknowledge that final approval by LDEQ and entry of this Consent Decree is subject to the requirements of La. R.S. 30:2050.7, which provides for public notice of this Consent Decree, opportunity for public comment, consideration of any comments, and concurrence by the State Attorney General. This Paragraph does not create any rights exercisable by the Settling Defendants.

#### XXIII. SIGNATORIES/SERVICE

76. Each undersigned representative of the SWP, Rayonier, LDEQ, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

77. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

78. The Settling Defendants agree not to oppose entry of this Consent Decree by the Court or to challenge any provision of this Consent Decree, unless the United States has notified the Settling Defendants in writing that it no longer supports entry of this Consent Decree.

79. The Settling Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### XXIV. INTEGRATION/APPENDICES

80. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree and supersede all prior agreements and understandings,

whether oral or written. Other than the Appendices, which are attached to and incorporated in this Consent Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

#### XXV. FINAL JUDGMENT

81. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States, LDEQ, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

#### XXVI. APPENDICES

82. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A - A description and map of the MSP Facility real property.

Appendix B - A description and map of the RPI Facility.

Appendix C - Work Plan for implementation of the Remedial measures at the RPI Facility.

Appendix D - The Human Health Risk Assessment: Recycling Park, Inc. prepared by Chemrisk, Inc. in December 2004.

Appendix E - Conveyance Notification to be recorded in the official conveyance records of the Clerk of Court of St. Mary Parish, Louisiana.

Appendix F - Transfer provisions to be set forth in any future act of conveyance of any right or interest in the RPI Facility.

Dated and entered this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

\_\_\_\_\_  
SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

Date: \_\_\_\_\_

\_\_\_\_\_  
RICHARD GLADSTEIN  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-1711

FOR THE UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

\_\_\_\_\_  
DONALD WASHINGTON  
United States Attorney  
Western District of Louisiana

Date: \_\_\_\_\_

\_\_\_\_\_  
JANICE E. HEBERT  
Assistant United States Attorney  
United States Attorney's Office  
Western District of Louisiana  
800 Lafayette Street, Suite 2200  
Lafayette, Louisiana 70501-7206  
(337) 262-6618

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

Date: \_\_\_\_\_

\_\_\_\_\_  
RICHARD E. GREENE  
Regional Administrator  
U.S. Environmental Protection Agency, Region VI  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Date: \_\_\_\_\_

\_\_\_\_\_  
TERRY SYKES  
Associate Regional Counsel (6RC-EW)  
Environmental Protection Agency, Region VI  
1445 Ross Avenue  
Dallas, Texas 75202

OF COUNSEL:

GREG MADDEN  
Attorney/Advisor  
Office of Regulatory Enforcement  
United States Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, D.C. 20460



FOR THE STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF  
ENVIRONMENTAL QUALITY:

Mike D. McDaniel, Ph.D., Secretary

BY: \_\_\_\_\_

Harold Leggett, Ph.D., Assistant Secretary  
Office of Environmental Compliance

\_\_\_\_\_  
CHRISTOPHER A. RATCLIFF  
Attorney Supervisor  
Special Assistant Attorney General  
For the State of Louisiana  
Department of Environmental Quality  
P.O. Box 4302  
Baton Rouge, LA 70821-4302  
(225) 219-3985

Date: \_\_\_\_\_

FOR SOUTHERN WOOD PIEDMONT COMPANY

Date: \_\_\_\_\_

\_\_\_\_\_  
TIMOTHY H. BRANNON  
PRESIDENT  
Southern Wood Piedmont Company

Date: \_\_\_\_\_

\_\_\_\_\_  
HENRY C. PERRET, JR.  
Perret Doise  
600 Jefferson St., Ste. 1200  
P.O. Drawer 3408  
Lafayette, LA 70502-3408

Boyd A. Bryan  
Jones Walker  
8555 United Plaza Boulevard  
Baton Rouge, La. 70809-7000

ATTORNEYS FOR SOUTHERN WOOD  
PIEDMONT COMPANY

FOR RAYONIER INC.

Date: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL R. HERMAN,  
VICE-PRESIDENT AND GENERAL COUNSEL  
Rayonier Inc.